

**STATE OF NEW MEXICO
TAXATION AND REVENUE DEPARTMENT
IMPLIED CONSENT ACT**

**IN THE MATTER OF THE PROPOSED REVOCATION
OF THE DRIVING PRIVILEGE OF VICTOR MONTOYA
NOTICE OF REVOCATION NO. 10032435 9**

DECISION AND ORDER

On July 22, 2011 at 10:00, an in-person hearing was scheduled before Brian VanDenzen Esq., Hearing Officer, in Santa Fe. The purpose of the hearing was to determine whether the driver's license of Victor Montoya ("Driver") should be revoked pursuant to the Implied Consent Act, NMSA 1978, §66-8-112(F) (2003). Attorney Andras Szantho appeared for attorney Marc Edwards on behalf of the Driver. **Officer Bert Lopez (#4375)** of the New Mexico State Police was subpoenaed but failed to appear.

FINDINGS BY THE PREPONDERANCE

- 1) The Driver appeared through counsel as directed in the notice of hearing.
- 2) Officer Lopez of the New Mexico State Police was subpoenaed to appear.
- 3) Officer Lopez did not appear at the time, or within ten-minutes, of the scheduled hearing.
- 4) Officer Lopez was an essential State witness needed to establish the elements under the Implied Consent Act.
- 5) Without the testimony of Officer Lopez, no hearing occurred.

DISCUSSION AND ANALYSIS

Attorney Andras Szantho appeared for attorney Marc Edwards on behalf of the Driver. Officer Bert Lopez of the New Mexico State Police was subpoenaed but failed to appear. As the testimony of Officer Lopez was necessary for the State to meet its burden under the Implied Consent Act, no hearing was held. The revocation is rescinded.

ORDER RESCINDING THE PROPOSED REVOCATION

IT IS HEREBY ORDERED that the revocation of the New Mexico driver's license, permit or privilege to drive of the person named above is **RESCINDED (R-A01)**.

THE DRIVER AND/OR THE DEPARTMENT IS ADVISED that pursuant to NMSA 1978, §66-8-112(H) (2003) any person adversely affected by an order of the division may appeal and seek review within thirty (30) days in the district court in the county where the offense for which he/she was arrested took place.

DATED: July 22, 2011

Brian VanDenzen
Hearing Officer
Taxation & Revenue Department
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Santa Fe, NM 87504